

Brookline Teachers Association, NEA-New Hampshire v. Brookline School District, SAU #41, Decision No. 2011-324 (Case No. E-0116-1).

The Union claimed that the District violated RSA 273-A:5, I (a), (e), (g), & (h) by refusing to recognize Occupational Therapists and Speech Language Pathologists as members of the teachers bargaining unit, by refusing to process the grievances concerning these employees to arbitration, by unilaterally changing the terms and conditions of their employment, and by failing to file a unit modification petition with the PELRB. The Union asserted that the District's past practice had been to treat subject employees as members of the bargaining unit. The District denied the charges and asserted that the subject employees were not included in the bargaining unit because, under the PELRB certification, the bargaining unit consisted of permanent teachers and Occupational Therapists and Speech Language Pathologists were not certified or recognized as teachers; that the complaint was untimely; and that the Union did not request arbitration of the subject grievances.

The Hearing Officer found that prior course of conduct in treating subject employees as bargaining unit employees was not dispositive of whether they were within the bargaining unit because, under *Appeal of Londonderry School District*, 142 N.H. 677, 682 (1998), an employer may provide non-bargaining unit employees with the same terms and conditions of employment as bargaining unit employees without "fear of enlarging the bargaining unit"; and collective bargaining agreements "may reflect the rights of employees not included in bargaining units." The Union's complaint was dismissed because Speech/Language Pathologists and Occupational Therapists were not covered by the PELRB bargaining unit certification or by the parties' collective bargaining agreement.

Disclaimer: This summary is intended to provide a brief description of the issues in this case and the outcome. The summary is not a substitute for the decision, should not be relied upon in place of the decision, and should not be cited as controlling or relevant authority in PELRB proceedings or other proceedings.